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Digital government, public participation, and service transformation: the impact of virtual courts

Introduction

A new, globally dominant orthodoxy in policy-making has emerged in the early twenty-first century, characterised by a new emphasis on transparency, ‘nudge’, liveness, design-thinking, and digitisation. This article sketches out this new terrain of twenty-first century policy-making and puts forward a critical sociological account of its organising principles and effects. A key proposition is that the design-thinking of digital-era government is giving rise to new ways for the state to show itself, and new ways for the public to see the state. Drawing upon Mirzoeff (2011), I describe this as the ‘*visuality of technocracy*’. If all elites find distinctive ways of displaying power and prestige — from the pillars of the Greek agora to the monuments of the Victorian age — it is possible, and I want to suggest productive, to think about the new, virtual estates of twenty-first century digital-era government as embodying a style that is expressive of political values.

What is also ‘on show’ in these virtual spaces, interfaces, and edifices is the state’s relationship with the public. This article is centrally concerned with the question of what happens to the public — particularly their ability to see and participate in democratic processes — when the state and its auxiliary agencies move into a virtual realm. This is an urgent question, not least because of the speed and global spread of the digital revolution in policy-making, evident in the eager adoption of e-government programmes around the world. This article is based upon an in-depth examination of one such digital government initiative: virtual courts. The article focuses on developments in the UK, and places these in the context of broader, global developments in criminal justice policy and digital-era government. At the heart of the article is a historical analysis of the changing place of the public in the courtroom. This provides a means of thinking afresh about how digital-era initiatives are reimagining the role and place of the public. Before turning to these matters, this article proceeds by exploring how and why courts have come to be conceived as a problem in the twenty-first century.

The ‘courts problem’ of today and the digital solutions of tomorrow

Successive reviews of the last decade have indicated that the court system in England and Wales is not working (see, for example, Briggs, 2015; Ministry of Justice, 2016; Payne, 2009). These reports tell different versions of the same story: victims’ and witnesses’ needs are too frequently neglected, there is often a lengthy wait for a case to progress to court, and there are additional hold-ups once court hearings start. One cause of this is a marked increase in most Courts’ caseload from the mid-1990s to the mid-2000s (Ministry of Justice, 2010). In the criminal courts, there has been a moderate decrease in caseload since 2010, but whatever slack this may have produced has been taken up by a new problem: an influx of historic sexual assault cases, producing more complex court hearings (Institute for Government, 2017). A similar story can be told about family courts, where a recent overall decrease in caseload has been offset by the retrenchment of legal aid and a consequent increase in litigants self-representing, one effect of which is lengthier hearings (Moore and Newbury, 2017). To exacerbate things, government funding for the HM Courts and Tribunal Service (HMCTS) has decreased by roughly 15% since 2010/11, and is set to fall further as the Ministry of Justice continues to seek austerity-related savings (NAO, 2017: 20).

This narrative of over-stretched resources and under-funded services will be familiar to any criminologist interested in recent changes to the prison population, policing, and probation — and not just in the UK, but across the economically-developed world, where austerity politics and a significant increase in caseload have produced similar pressures to those noted above (see, for example, Jehle and Wade, 2010, for a cross-European perspective). In the official framing of the ‘courts problem’ another story holds. It is that the courts system needs modernising. It is too paper-bound, given to repetitious entry of information, prone to inputting errors, too sluggish, anachronistic, and unreliable. It is a problem-conception that neatly incorporates the two big criminal justice policy problems facing most economically-advanced liberal democracies today: a crisis of capacity and a crisis of public trust.

Increasingly, the official solution to both of these problems lies with digital technology. Australia, Canada, the USA, France, and New Zealand are all undertaking court reform programmes in which technological solutions predominate, and — more than that — are seen as ushering in a new era of agile justice. Take, by way of example, ‘Transforming our Justice System’, a 2016 report announcing the recent round of court reforms in England and Wales. Here, the out-dated courts system of today is counterposed with the transformative effects of digital technology (Ministry of Justice *et al*, 2016). By far the most ambitious feature of the justice system of tomorrow is the move towards virtual hearings, the cornerstone of the government’s court reform programme, costing an anticipated £1 billion (HMCTS, 2016). The first fully virtual hearings were piloted in Spring 2018, and are set to be rolled out across the justice system over the next 18 months (HMCTS and Ministry of Justice, 2018). In turn, there has been a steady selling-off of court buildings across England and Wales: 146 courts were closed between 2010 and 2015, and the 2016 reforms will bring the number of operational court buildings down from 460 to 399 (Caird and Priddy, 2018: 3).

Governments are confident that there will be no going back to the old physical courts of the past. Chief amongst the expected gains is convenience. Defendants will give evidence from prison, vulnerable witnesses will deliver testimony from video conferencing facilities, busy barristers will deliver cases *in-situ*, and members of the public will be able to watch on their laptop at home. In response, an international body of academic research has sought to identify what is lost in the move towards virtual courts. A key point of concern within this literature is the impact of video-link testimony on procedural justice, including the reduced possibility for interaction between legal counsel and defendants (Rowden, 2013; Rowden et al, 2013; Wallace et al, 2017). This is partly McKay’s (2018; 2018b) concern too, in her in-depth study of Australian prisoners’ experiences of remote participation in court hearings. McKay (2018; 2018b) offers a comprehensive assessment of how this technology is undermining defendants’ rights to a public hearing and to confront witnesses. McKay’s (2018; 2018b) research tells another story about video-link technology in the courtroom: its tendency to go wrong, be poorly-implemented and under-funded, and to derail proceedings. It is an insight supported by Rowden et al’s (2013) review of virtual court initiatives across Australia and, beyond this, research concerning the use of video-link testimony from child and vulnerable witnesses (see, for example, Smith, 2019).

The virtual court is, then, problematic in principle and practice. A less dominant concern within the literature is the idea that virtuality is potentially changing the meaning of the court hearing as a ‘public ritual’ (Mulcahy, 2008). In a focussed analysis of a French court hearing, Licoppe and Dumoulin (2010) suggest that videoconferencing is contributing to a ‘deformalization’ of proceedings (p. 230). Rowden (2018) and Mulcahy (2007, 2008, 2011)

are also interested in the role of video-link technology in changing the tone of court proceedings. Both see the architecture, design, and placement of courts as essential to their function as civic spaces, and suggest that the symbolic and material features of court spaces have been largely neglected in the move towards virtual courts. If the traditional courtroom instils a sense of gravitas, remote access sites are almost invariably 'bland, ordinary and mundane', as Rowden (2018: 269) succinctly puts it — and this invariably changes what it means to participate in and watch court proceedings. For Mulcahy, the increased reliance on video-link testimony signals a shift from the 'sensual to the sanitized' (Mulcahy, 2008: 486), both in terms of witnesses' experience of the court process, and in terms of the courtroom itself, where the sight, sound, smell of witnesses is replaced with their less intrusive virtual-double.

This article is also concerned with the question of how the rise of the virtual court is changing the experience and meaning of justice, with a particular focus on how the public's role and place in the courtroom is being redefined. In the discussion below, this serves as a point of departure for theorising the political project of digital-era government. The article turns now to sketch out this broad policy context, with the aim of explaining how the new orthodoxies of openness, digitisation, and user-oriented policy-making have helped make virtual courts appear an especially attractive solution to the 'courts problem'.

Open, online, and user-oriented: the new bases of twenty-first century policy

The move towards virtual courts is indicative of a newly dominant approach to twenty-first century policy-making, characterised by four interconnected principles: design-thinking, 'nudge', digitisation, and transparency. This section outlines each in turn, identifies their relationship to virtual courts, and examines how they work together to produce a distinctive new terrain for twenty-first century policy-making.

Virtual courts and design-thinking have perhaps the most obvious point of connection. In the UK, the idea that policy problems are best seen and tackled as design problems is the foundational principle of 'open policy-making'. It is this approach that allows for the 'courts problem' to be dealt with as a 'modernisation' problem. If courts do not work, open policy-making instructs us to look to their location and design to solve the problem (rather than the legal processes and legislative framework that inform their work, or the social factors that might increase demand).

Open policy-making means more than this, of course. Matthew Taylor (2014), an early UK proponent of design-oriented policy-making, points to other core features, such as a prizing of experimental methods, a tolerance for failures, and incrementalism, so that modest prototypes are tested, refined, re-tested. More than anything else, design-thinking is an approach that involves placing the user centre-stage: public services work (or do not work) based on their usability.

It is an idea familiar to anyone who has an interest in twentieth and twenty-first century politics, and the steady transformation of policy-making into a technocratic endeavour. This journal has made a significant contribution to academic debate in this area. In particular, articles have pointed to the global emergence of a public sector modernisation agenda in the late twentieth to early twenty-first century, and noted its reliance upon a rhetoric of consumer choice (see, for example, Mayo et al, 2007; Taylor and Burt, 2010). Design-thinking is in some senses a corollary of this earlier modernisation project. It speaks, too, of more recent developments and alluring ideas.

For one thing, design-thinking reflects a new tendency to treat policy-making as creative work. So it is that this new approach has been accompanied by the emergence of a new cadre of UK policy-makers, hastened by the government's Civil Service reform plan (2014), which announced an intention to diversify the policy-making workforce. The newer, design-oriented policy-making teams within government — notably the Policy Lab and the Government's Digital Service — are beneficiaries of this shift in professional skills set. The UK is by no means alone in making the move towards design-thinking, administered and managed by creatives. The same type of work is underway in Denmark's MindLab, Auckland's Co-Design Lab, and Canada's Innovation Lab — each of them cross-department government units launched in the last decade.

The move towards a more self-consciously creative approach to policy-making involves a turning away from older — the implication is out-dated — approaches. This is the vision encapsulated in the Civil Services reform plan (2014), and it is there too in Taylor's (2014) account of the merits of design-thinking. He is unreserved in his criticism of the old 'policy presumption'; that is, the idea that legislation and regulation are the best routes to bringing about change. To Taylor (2014), the declamatory politics of welfare-provision belong to the early and mid-twentieth century. Design-thinking means moving away from overt prohibitions, and shifts the focus onto how policies might answer to the demands of modern life and gently shape service-users' behaviour towards certain preferred outcomes. In this respect, it dovetails neatly with a perspective that has gained increasing popularity in the last decade, namely the idea that policy should seek to 'nudge' people's behaviour.

The central principle behind 'nudge' is that 'people make pretty bad decisions', as Thaler and Sunstein (2008:1) put it and as a case in point, the authors point to children's tendency to choose sugary over healthy canteen snacks. It is a telling example, because throughout Thaler and Sunstein's (2008) hugely influential book, people are recurrently imagined to be docile and infantile. People are 'not *exactly* lemmings...', they comment at one point (2008: 53), but it is clear that they perceive the differences to be relatively unimportant.

People's tendency for unthinking action can be channelled, though, by incorporating a 'nudge', that is, by manipulating 'any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options' (2008: 6). Crucially, nudges aren't formal or legislative: '[p]utting the fruit at eye level counts as a nudge. Banning junk food does not' (2008: 6). It is an idea that chimes with Taylor's vision of design-oriented policy-making, where the older tactics of regulating or banning are seen as out-dated, and softer, more informal mechanisms for designing out certain types of behaviour seem more effective.

The influence of 'nudge' is immediately evident in some areas of policy, most notably public health. Its influence is broader than this, though, and that is because the particular conception of human behaviour on which 'nudge' is based has become so influential as to have a diffuse effect on policy-making, as Leggett (2014) recently argued in this journal. The creation of virtual courts, for example, rests on the presumption that the best solution to a policy problem is that which creates a path of least resistance for service-users. Put differently, only in circumstances where citizens are understood as individuals driven by convenience and short-term gain — and where the task of policy is to direct those drives — can the creation of virtual courts seem like such a straightforwardly beneficial endeavour.

If design-thinking provides the tools for conjuring virtual courts as a policy solution, 'nudge' offers up a model of human behaviour that makes a focus on the courtroom's usability seem self-evident. It is, though, digital technology that makes virtual courts thinkable in the

first place. In this respect, again, virtual courts are part of a broader shift, one that is less than a decade old. In the UK, the creation of the Government Digital Service (GDS) in 2011 was a key step towards achieving ‘digital government’, an aim shared by most twenty-first century liberal democracies — Canada, Australia, Estonia, and the Netherlands, to name a few. Dunleavy *et al* (2006) see the advent of ‘digital government’ as epoch-defining. It is certainly tempting to see digital technology as exerting a unilateral influence over contemporary policy, such are the claims made about its capacity to revolutionise service-delivery. That, though, is to ignore the place of digitisation within the nexus of twenty-first century policy-making principles. As the GDS blog makes clear, digital solutions are fundamentally technocratic design solutions. Take, by way of example, Stephen Foreshow-Cain, then-Executive Director of the GDS, describing the Service’s remit:

Users don’t care about the structure of government. They don’t care which department does this or agency does that. They don’t care about your process. They just want to do what they need to do, get stuff done, and get on with their lives. Users have needs — our job in government is to build services that meet those needs (Foreshow-Cain, 2016)

Digitisation, here and elsewhere, is a means of pursuing the policy solutions recommended by design-thinking and nudge: note the repeated references above to ‘getting stuff done’ and users’ needs. And together, this triumvirate of design-thinking, ‘nudge’, and digitisation answers to a base problem — the same base problem for the courts system — a crisis of capacity, understood as a problem of sluggish, poorly-designed public services that do not meet individual users’ needs.

Digitisation is expected to answer to the other key problem facing twenty-first century liberal democracies: the crisis of public trust. Looked at from this perspective, digital technology serves a political function in opening up the state and its agencies to achieve transparency, that most cherished ideal of twenty-first century liberal democracies. As it refers to the work of the state, transparency means making services and public-facing institutions accessible to citizens 24/7 via pushed-out data and broadcast streams (Moore, 2018). It is a project that is meant to boost public trust by laying bare the work of the state in online repositories and archives. The UK government’s court reform proposals reflect this vision: here, discussion moves seamlessly between digital reform, transparency, and the promise of an open, online, user-friendly criminal justice system for tomorrow (Ministry of Justice, 2016).

The bigger vision behind such initiatives is to build ‘government as a platform’; this, after all, is the GDS’ operating principle. The phrase was coined by Tim O’Reilly, a US computer industry strategist, to refer to the idea that governments should provide — constitute, even — a digital infrastructure which evolves according to use, just in the way that an internet search engine or social media platform learns from online traffic and user behaviour (O’Reilly, 2010). In this sense ‘government as a platform’ will produce ‘a new way of interacting with society’, as a thought piece for the Policy Lab Blog puts it (Price, 2016). That ‘new way of interacting’ involves tracing human behaviour in the online world in order to ascertain how to make online processes as quick and convenient as possible — or better still, how to alter the ‘choice architecture’ to achieve certain policy outcomes. We are back to the underpinning ideas of ‘nudge’ and design-thinking.

The logical extension of this project — and an explicit aspiration of the GDS (Singleton, 2015) — is for governments to become unified systems, rather than for work and processes to be overseen by discrete government departments. If it comes to fruition, it

means that the state of tomorrow will reside in one vast online edifice, a ‘glass government’, as the language of transparency has it (Office for Science, 2016: 30). It is a shift that is set to radically transform the relationship between the state and the public, and in ways that are distinct from earlier government modernisation projects. As a way into thinking about these distinct effects, the article returns now to consider the rise of virtual courts in the context of broader historical changes to the location and design of the English court, and the public’s place within it.

The history of the court as a public space: from open-air to virtual hearings

The virtual court is an especially pertinent example of how the current drive to re-design public services and processes is reconstituting the relationship between the state and the public, and with potentially radical consequences. It is worth recalling here that the open court is a mainstay of modern liberal democracies, with the right to a public trial legally enshrined. The eighteenth century English jurist and philosopher Jeremy Bentham famously saw open courts as schools and theatres for the then emerging liberal democracies of north-western Europe, serving to at once ‘educate the public and discipline the state’ (Resnik, 2013: 78). For socio-legal scholars, open justice is about more than allowing justice to be ‘seen to be done’. Both Mulcahy (2007; 2008) and Rowden (2018) see the courtroom as a symbolically-rich space which materialises justice and gives meaning to justice outcomes. Resnik and Curtis (2011) note something further: the open courtroom is an arena for participatory democracy. As they put it: ‘[o]pen court proceedings enable people to watch, debate, develop, contest, and materialize the exercise of both public and private power’ (2011: 301). As such, open courts serve a political function in allowing for justice to be carried out in the co-presence of those who exercise power and those who are subject to it.

This is by no means to suggest that openness is a sufficient condition for public participation, nor that public access to the courtroom is a given in liberal democracies. Mulcahy (2015) points out that, historically, women’s conduct in the courtroom has been heavily regulated and, elsewhere notes that as societies have become more open and democratic, they have tended to limit, rather than extend, the public’s access to the courtroom (Mulcahy, 2011). The latter point indicates that the type of solutions a government comes up with to achieve ‘open justice’ tells us much about how they understand the public and their role in democratic processes. Looked at in this way, decisions about where to place courts, what they should look like, where to locate the public within them, and how to encourage the public to participate are expressive of broader relations of social authority. A brief look at the history of the court as a public space indicates as much.

Early court spaces throughout Europe and North America were make-shift. In the UK, the earliest courts — excepting those hearing matters related to the Crown — took place in open-air, on common heaths (Graham, 2003: 42). This continued up to the thirteenth century, when hearings were transferred first to castles, and then, in the sixteenth century, to town or county halls. Graham points out that this change in accommodation was commensurate with a broader development in the meaning of justice:

No longer could [the court] be described as a gathering where a community solved its problems according to unwritten custom. Now it was an event in the life of an institution which perpetuated its authority through its own procedures, and above all through its written record. A retreat under cover became inevitable, if only because ink and parchment were awkward to use out of doors (Graham, 2003: 42).

That idea, again, that new forms of technology — in this case ink and parchment — make a compelling and neutral case for change. Looked at with the benefit of historical distance, and as Graham (2003) makes clear, the move from oral to written recording signals broader institutional change, namely the slow and steady emergence of a formal, modern justice system. A key feature of this shift was the creation of purpose-built, contained courthouses, which became the norm in the late eighteenth century (Graham, 2003). The re-building of London's Old Bailey Sessions House in the 1770s is an interesting case in point: the new courthouse introduced dedicated boxes for juries and was, for the first time, fully self-contained (Devereaux, 2012: 101). One effect of this, Devereaux (2012) argues, was to reconfigure the court as a space akin to the modern theatre, given to performance and spectatorship, not, it bears noting, that this shift ushered in a new era of quiet spectatorship. Graham (2003) observes that English courts of this era were characterised by interjections from the public gallery and ambient noise, and that the 'sociable court' remained the norm until the late nineteenth century.

There is much more that could be said about the history of the English court, but I want to pause here to note a set of shifts in the location and design of court spaces, from make-shift arrangements in the early modern period — to formal, dedicated court houses in the modern period — and looking ahead, to the virtual court of tomorrow. The next section considers how we might make sense of this trajectory and, on from that, what the virtual court tells us about the political project of digital-era government.

The visibility of technocracy

It is possible to think about the three historical phases of court design and location noted above — the make-shift, the purpose-built, and the virtual court — in terms of a radical change in the role of the public, *as a public*. The make-shift early modern court required the public to serve as *spectators* to a ceremony; public presence served to sanction the authority of the person dispensing justice. The purpose-built modern courtroom required the public to serve as *observers* to the formal process of justice; the public's presence there sanctioned the authority of the court. The late modern court — that is, the virtual court of tomorrow — requires the public to serve as *viewers*. Viewers of *what*, is less easy to determine.

Mirzoeff's (2011) work on visibility offers some possible answers. He argues that political elites work to enshrine a particular 'visibility'; that is, an 'exclusive claim to see'. Visibility is a cultural-political project, directed towards legitimising power by giving exclusive authority to a particular viewpoint. Mirzoeff (2011) traces a broad historical shift in the geo-politically dominant mode of visibility, one that might be broadly characterised as a move towards ever-greater abstraction and obscurity. Where, in early-modern images, authority was clearly located in the figure of the official overseer — pictured as someone who directly watched over and that-way maintained order — the rise of imperialism across Europe brought with it a new mode of visibility, one where authority came to be located in the figure of the military commander. No longer personally present in the images of idealised social order, the military commander's authority to see instead manifested in strictly-ordered maps of events, land, and newly conquered populations.

Mirzoeff (2011) argues that another fundamental change in visibility occurred in the post-World War Two period, and he calls this the 'military-industrial' visual complex. From herein, power vanishes — or, more accurately, becomes diffuse, disembodied, aerial, all-seeing. Here is Mirzoeff comparing this type of visibility to the preceding imperialist mode of visibility:

Today's means of material visualization do not generate information about the presence of the human visualizer, if indeed there even is one. If we look at the

drawings made by Bagetti for Napoleon, and other such battlefield visualizations of the Clausewitz era, the viewpoint of the commanding general was critical to the technical production of the map. By contrast, a satellite image, or one taken from a UAV [unmanned aerial vehicle], tells us nothing at all about those who wanted the visualization made (Mirzoeff, 2011: 279)

In other words, the dominant 'claim to see' today does not issue from anywhere in particular. It appears devoid of rhetoric; just an endless, continuous, automatically updating feed of as-live audio-visual output. It is different in kind to earlier forms of visibility, because those watching are not asked to licence the image by recognising the authority of the person who sees or what is on show. Rather, it is the visual field itself — the sense that a machine has afforded a view of *so much* — that legitimises what is shown.

This is also the 'claim to see' that characterises the virtual courtroom of tomorrow: its claim to authority lies in the production of a vast stream of visual court records, deposited in a publicly-accessible database. To return to the question of what is being viewed in the virtual court of tomorrow: it is, strictly speaking, a screen transmitting a camera-produced image of a court hearing. This is no technical detail. The camera in the courtroom, the digital archive, and the viewer's screen are the bases for the virtual court's exhortation to the public to licence its work and outcomes. As such, the public's role in the court of tomorrow is to serve as would-be, potential viewers, their presence 'felt' in as much as they can dip in and out of the mediated courtroom.

I want to suggest something further: these features of the virtual court are also those of the new project of digital-era policy-making. The visibility of the virtual court is also, I want to argue, the 'visibility of technocracy'. There are three key features to this twenty-first century 'claim to see': the idea of pure, unmediated visibility; the dematerialisation of things, processes, and relations; and the obscuration of origin-points. The first — the idea of pure visibility — is perhaps best thought of as the precondition for the second and third. Key to this is the prizing of as-live, direct, (apparently) unmediated visibility. This is the claim of 'transparency' and 'glass government': that we are being shown everything there is to see. In fact, what the various broadcast streams, data dumps, and visual archives of digital-era governments' growing online edifice show is a very particular view of the state. It is the daily, administrative workings of public-facing institutions, agencies, and executive branches that is on show. If this is 'everything' — the window into the state that transparency promises, the complete virtual world that is 'government as platform' — then it confirms a powerful idea: that the twenty-first century state resides in the palpably busy, mundane work of public services. This is the new 'political fiction' of late modern liberal democracies, to borrow from Ezrahi (2004). He argues that one of the key features of the modern democratic state is to bring itself into being, to conjure itself up, to impress upon us the idea that it resides *somewhere*, and in giving the illusion that it exists as an entity, shore up its authority and guard against becoming obsolete. Digital-era governments do this, too, even as they allow the state to retreat into a virtual realm. The ideal is for twenty-first century government to be as user-friendly as Amazon, as pervasive as Facebook, and as much of a go-to as Google — for life to be unthinkable without it.

The ideal of pure visibility is partly oriented towards achieving maximum accessibility and usability. It is, though, a very particular form of access, one that is premised on the idea that interaction between the state and the public should, wherever possible, be mediated rather than direct, virtual rather than based on co-presence. This is the second key feature of the 'visibility of technocracy': it insists upon the dematerialisation of things, processes, and relations. As mentioned above, Mulcahy (2008) suggests that the increasing reliance

on live-link video testimony in the courtroom signals a creeping dematerialisation of the court space, and that this threatens the very basis of the court hearing as a public ritual. This potential cost of digitisation rarely figures in the debates about redesigning public services: the assumption, always, is that moving processes, procedures, and records online will only make things better. The idea that the use of a public service or experience of a public event might have benefits over and above fulfilling an individual goal-oriented task simply does not feature as a consideration in the new approach to policy-making.

Thinking about the essentially public character — feel, experience — of state-provided services and official procedures has become deeply unfashionable in policy-making circles. This is Honig's (2017) concern, too: she is interested in the large-scale closure of public spaces in the USA, such as libraries, public swimming pools, courts, public bathrooms, and parks — a consequence of the movement of public services and proceedings into a virtual realm, as well as the privatisation of public space. Late capitalist liberal democracies are steadily doing away with 'public things', Honig (2017) argues, the 'necessary conditions of democratic life'. Drawing on Winnicott's object attachment theory, she points to an affinity between children's use of objects to transition between different developmental stages and our use of public 'things' to develop an intuitive understanding of what it means to be a citizen. For Honig (2017), materiality and co-presence matter: public spaces and buildings, where we can be co-present with others — those like us, and not so like us — urge duties (to be silent, in the library; attentive in the courtroom; respectful of communal facilities, in the park).

They are, too, places that the public go to make their presence felt; that is, to protest when a decision or process appears unjust. In this respect, the public, as a public, is potentially troublesome. The public as a mass of individual service-users is a different matter. This is the dominant conception of 'the public' in twenty-first century policy-making, and it leads to a radically different idea about the meaning and value of public 'presence'. For instead of being *felt*, now it is *registered* in the wave of online behaviour through which the government's digital infrastructure is tested and reformed. So it is that the aim of policy-makers today is to design services for individual use, rather than conjure up any relationship between the state and its citizens. The public comes to be seen, in turn, as web-users, their ability to engage with public services shaped predominantly by their capability to use and access the internet and digital technology, as the Government's Digital Inclusion Strategy (2015) makes clear. The idea is that, equipped with these skills, the public's *real* needs, as individuals, can be addressed. Here is how Melanie Swan, the Founder of the Institute for Blockchain Studies puts it:

Governments could shift from being the forced one-size-fits-all 'greater good' model at present to one that can be tailored to the needs of individuals. Imagine a world of governance services as individualised as Starbucks coffee orders (Swan, 2015: 44)

Except, of course, unlike in a Starbucks cafe, the service provided is the outcome of algorithmic calculations to determine the user's needs and preferences, rather than direct human interaction. And if this technical work can detect a way to 'nudge' behaviour by altering the service-user's 'choice architecture', all the better. This is a model of public services where the individual is conceived of as a discreet entity, and, at the very same time, fades into anonymity. A similar observation can be made about the virtual court. The public can tune in to proceedings at their leisure, in the comfort of their own home, skipping through sections that do not interest them; inside the courtroom, they figure as an unseen audience, unknown in size, attitude, and demographic make-up.

This mixture of technical individuation and perceptual distance might put us in mind, again, of the visuality characterising Mirzoeff's (2011) military-industrial visual complex, where people can be located and mapped with great precision, and without any need for human contact. What is obscured, as Mirzoeff (2011) points out, is the eye-line between the person seeing and the person being seen — the final key feature of the 'visuality of technocracy' to be considered here. For what comes to replace the view afforded by a direct eye-line is a view of things that appears all-encompassing, complete, and omniscient. Above, I pointed out that the type of mediated visibility favoured by digital-era policy initiatives give the appearance of showing everything there is to see. Here, I want to point out a related effect: this visibility seems to be the product of an automated, impersonal form of 'seeing', divorced from human intention and political decision-making. Much courtroom broadcasting works towards this style (Moore et al, forthcoming). So do satellite-produced images. Blockchain, too — that increasingly vaunted technological solution to contemporary policy problems — is taken to work as an unimpeachable auditor of 'what is going on'. In other words, the idea that a neutral, all-seeing technological gaze is possible and necessary has become key to the government initiatives of twenty-first century technocracies.

Conclusion: Towards a new critical approach to digital era government

Buoyed by the rhetoric of transparency, driven by the possibilities afforded by digital technology, late modern liberal democracies are building an online infrastructure which they hope will become the main channel through which the public interacts with the state. Virtual courts will be part of this online edifice, as will the broadcast streams of other public-facing institutions, downloads of real-time data from public sector organisations, and online hubs for accessing public services. The new orthodoxy of digital-era government is that transferring government and official processes to an online world is a much-needed response to the dual crises of capacity and trust — acute crises for the criminal justice system, but evident in other areas too. If governments can not keep up with demand, automated, online systems can come to treat that problem. If the public distrust the state and its agencies, allowing people to see what these agencies are doing at any given moment will boost confidence. These are, though, particular ways of conceiving of and treating the problems of capacity and distrust: it is to imagine that the former is best eased by increasing productivity (rather than reducing workload), and the latter is a slender, specific problem of not being able to see — rather than make sense of, interpret, act on. That public services and procedures are increasingly available to us online might make things more convenient, but this does not mean that the process and rules that underpin them are easier to understand. Anyone who has used the online system for choosing a 'preferred' school for their child or watched a court broadcast knows as much.

This suggests the need to reconsider the idea that digital technology will radically transform public services and official processes. The analysis above has challenged another implicit assumption of twenty-first century design-thinking: that moving the work of the state online is a costless endeavour. By way of conclusion, I want to suggest that interrogating these two key assumptions — that 'everything will be changed' and 'nothing will be lost' in the coming technological revolution in public services — becomes the basis for a new, critical sociological approach to digital era government. This article has sought to clear some ground for this work. One of its key propositions is that the move towards a virtual realm radically alters how the state shows itself to the public, and how the public is able to see the state. Assessing the effects of this is a huge and complex task, requiring a programme of research. This article has sought to illuminate one consequence, namely the transformation of the public into passive viewers of justice in the virtual court of tomorrow. The historical analysis above highlighted that changes in court arrangements are

marked by changing exhortations to the public to licence what is shown. In the case of virtual courts, it is not the public act of observing or spectating that is supposed to confirm that justice has been ‘seen to be done’, but rather the technical work of filming, transmitting, and archiving the court’s visual records. Future research would be usefully directed towards assessing the functions ascribed to other digital-era policy solutions — such as distributed ledger technology, as-live streaming, and body-cams — as apparently neutral, all-seeing recording devices. Certainly, assessing precisely what it is these new technologies are supposed to ‘see’, as well as when and by whom they are supposed to be ‘seen’ would be of real value.

To return to the historical analysis of courts, the broader point to make is that changing court arrangements coincide with social shifts in the meaning and operation of authority. In theorising this relationship, this article made use of Mirzoeff (2011) to argue that these historical changes are best thought of as shifts in the dominant mode of visibility. I suggested that the virtual court participates in and works towards a ‘visibility of technocracy’, and that this is a central feature of new, twenty-first century digital era policy initiatives. It is a mode of visibility that seeks to bring so much into view, but, at the same time, allows the public to fade into anonymity. Bringing the public back into focus — as a public, rather than a collection of individuals — should serve as a primary aim for social scientists seeking to understand and research the new digital era of design-oriented policy-making. Following Honig (2017), this means developing a more sophisticated understanding of what it means for the public to come into contact with the state and its auxiliary agencies, one that takes us beyond the official conception of the public as virtual service-users driven by convenience.

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